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*ADMITTED IN DC ONLY

March 5, 2019

Re: Fund Liquidation Holdings LLC v. Citibank, N.A., No 16-cv-05263 (AKH) (S.D.N.Y.)

Dear Judge Hellerstein:

We represent defendant Credit Suisse AG in the above-referenced matter and write on behalf of the Non-Settling Defendants¹ regarding the letter filed by Plaintiff Fund Liquidation Holdings (“FLH”) on February 22, 2019 (Dkt. 373) reminding the Court of its “unopposed motion seeking preliminary approval of the Citi and JPMorgan settlements” (the “Motion for Preliminary Approval”) (Dkt. 314). To the extent that Plaintiff’s February 22, 2019 letter can be read as urging the Court to rule on the Motion for Preliminary Approval as soon as possible and prior to the resolution of the four motions to be addressed at the May 2, 2019 oral argument, the Non-Settling Defendants write to note that the Court should first determine whether it has subject matter jurisdiction over this case, which will not occur until after this Court hears argument on the pending motions, before ruling on the Motion for Preliminary Approval.

As the Court is aware, the motions to be addressed at the May 2, 2019 hearing raise a number of issues, including whether this Court has subject matter jurisdiction over this case. *See* Dkt. 319, at Part I; Dkt. 346, at Part I; Dkt. 359, at Parts I-II. “Without jurisdiction[,] the court cannot proceed at all in any cause,” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998), including consideration of Plaintiff’s Motion for Preliminary Approval, *see, e.g., Schumacher v. SC Data Center, Inc.*, 912 F.3d 1104, 1105 (8th Cir. 2019) (holding that the “district

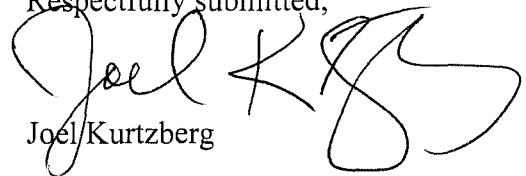
¹ The Non-Settling Defendants are Bank of America, N.A., The Royal Bank of Scotland plc, UBS AG, BNP Paribas, S.A., Oversea-Chinese Banking Corporation Ltd., Deutsche Bank AG, Credit Agricole Corporate and Investment Bank, Credit Suisse AG, Standard Chartered Bank, DBS Bank Ltd., United Overseas Bank Limited, Australia and New Zealand Banking Group, Ltd., The Bank of Tokyo-Mitsubishi UFJ, Ltd., and The Hongkong and Shanghai Banking Corporation Limited.

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court erred by not assessing standing before enforcing the settlement agreement,” and explaining that the district court’s obligation to ensure that standing exists “applies to settlements of class actions because ‘[a]n approved settlement takes the form of a judgment of the court, and without both Article III power and proper subject-matter jurisdiction the court cannot act’”); *In re Literary Works in Elec. Databases Copyright Litig.*, 509 F.3d 116, 122 n.2 (2d Cir. 2007) (similar), *rev’d and remanded sub nom. on other grounds*, *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *Zink v. First Niagara Bank, N.A.*, 155 F. Supp. 3d 297 (W.D.N.Y. 2016) (“[U]ncertainty as to subject matter jurisdiction cannot be treated merely as a factor to be weighed in the settlement equation. Unless subject matter jurisdiction is established, [a court] cannot even consider [a motion for preliminary approval of class action settlement or conditional certification of a proposed settlement class], much less approve it.”); *Martens v. Smith Barney, Inc.*, 181 F.R.D. 243, 250–51 (S.D.N.Y. 1998) (“The court can only proceed to examine whether the parties’ settlement is fair, adequate, and reasonable . . . if it has subject matter jurisdiction over plaintiffs’ suit.”); *Cronin v. Browner*, 898 F. Supp. 1052, 1057 (S.D.N.Y. 1995) (discussing “threshold analysis of subject matter jurisdiction that [courts] are obliged to undertake” in “the context of a proposed settlement”). Plaintiff appears to acknowledge this requirement, as the proposed approval order requires the Court to find “that it has subject matter jurisdiction to preliminarily approve the Settlement Agreements.” Dkt. 317 ¶ 2. Non-Settling Defendants therefore respectfully submit that the Court should defer consideration of Plaintiff’s Motion for Preliminary Approval until after the Court has decided Non-Settling Defendants’ pending challenge to the Court’s subject matter jurisdiction.

Respectfully submitted,



Joel Kurtzberg

The Honorable Alvin K. Hellerstein
 United States District Judge
 Daniel Patrick Moynihan United States Courthouse
 500 Pearl Street
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BY ECF

cc: Counsel of Record (via ECF)